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3   ***E-FILED 6/27/06***

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9   **IN THE UNITED STATES DISTRICT COURT**

10   **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11   **SAN JOSE DIVISION**

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13   PING YAN,   Case Number C 06-03573 RS

14   Plaintiff,   ORDER TO SHOW CAUSE

15   v.

16   MICHAEL CHERTOFF, et al.,

17   Defendants.

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20   On June 5, 2006, plaintiff Ping Yan filed a "Complaint For Writ in the Nature of

21   Mandamus" against defendants Michael Chertoff, Secretary of the Department of Homeland

22   Security; Emilio T. Gonzalez, Director of the United States Citizenship and Immigration

23   Services ("CIS"); Francis D. Siciliano, Officer-in charge of the San Jose Sub Office of the CIS;

24   Robert S. Mueller III, Director of the Federal Bureau of Investigation; and Evelyn Upchurch

25   Acting Director of the Nebraska Service Center of the CIS.

26   Plaintiff alleges defendants have failed to process her two "I-485, Application to

27   Register Permanent Resident or Adjust Status" in a timely manner, apparently as a result of

28   delays in processing a security check.

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1   Plaintiff alleges that Defendants have violated the Administrative Procedures Act, 5

2 U.S.C § 701 et. seq., by "withholding or unreasonably delaying action on the Plaintiff's I-485

3 applications and [by] fail[ing] to carry out the adjudicative functions delegated to them by law."

4 Plaintiff requests that this Court enter an order requiring defendants to complete the security

5 check and process the case to conclusion. Good cause therefore appearing, IT IS HEREBY

6 ORDERED as follows:

7   (1)   The Clerk of the Court shall serve by certified mail a copy of the petition and a

8 copy of this Order upon counsel for Defendants, the Office of the United States Attorney.

9   (2)   Defendants shall, within sixty (60) days after receiving service of the petition, file

10 and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be

11 granted. At the time the answer is filed, Defendants shall lodge with the Court all records

12 relevant to a determination of the issues presented by the complaint. If Defendants contend that

13 Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the

14 complaint, Defendants shall specify what administrative remedy remains available to Plaintiff.

15 If Defendants waive or concede the issue of exhaustion, Defendants shall so state in their

16 answer.

17   (3)   Plaintiff may file a response to the matters raised in the answer within thirty (30)

18 days after receiving the answer.

19   (4)   Unless otherwise ordered by the Court, the matter will be deemed submitted upon

20 the filing of the response or upon the expiration of time to file a response.

21   (5)   No later than the time their respective responses hereunder are due, the parties

22 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate

23 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction

24 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

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1   (6) The Order Setting Initial Case Management Conference and ADR deadlines entered

2   on June 5, 2006 in this action is hereby VACATED.

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    IT IS SO ORDERED.
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    Dated: June 27, 2006
5   _____
                                                        RICHARD SEEBORG
6   United States Magistrate Judge

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ORDER TO SHOW CAUSE

1   **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN DELIVERED TO:**

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3   Justin X. Wang   lawbw@aol.com

4   Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the Court's CM/ECF program.

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6   **Dated: 6/27/06**   **Chambers of Judge Richard Seeborg**

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                                                              By: **/s/ BAK**
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